



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention: Public Housing Hub
Office Directors; PIH Program Center
Coordinators; and Housing Choice Voucher
Public Housing Agencies

NOTICE PIH

Cross References:

Subject: Housing Choice Voucher Program – Enhanced Vouchers -- Adjustment of Voucher Housing Assistance Payments for Certain Families that Received “Preservation” Voucher Assistance as the Result of an Owner Prepayment or Voluntary Termination of Mortgage Insurance for a Preservation Eligible Property in Federal Fiscal Year (FY) 1997, FY 1998, and FY 1999

1. Purpose.

This notice revises the procedure for the calculation of voucher housing assistance payments (HAP) under PIH Notices 97-29, 98-19, 99-16, and 00-09 for families that received enhanced vouchers as the result of an owner decision to prepay the mortgage or voluntarily terminate the FHA mortgage insurance of a “preservation eligible” property in FY 1997, 1998, and 1999. The notice provides instructions to PHAs on identifying impacted families, re-calculating housing assistance payments (HAP) for the period in question, and paying this assistance directly to the impacted families.

This notice only applies to families that were admitted to the voucher program as the result of an owner prepayment of the mortgage or the voluntary termination of the mortgage insurance of a preservation eligible property in FY 1997, 1998, and 1999. The PHA in such cases received a special allocation of vouchers (known at the time as “preservation vouchers”) from HUD to provide assistance to residents as a result of an owner prepayment or voluntary termination of mortgage insurance for a specific preservation eligible property.

This notice does not apply to any families that received certificates, or to any families that received vouchers or certificates as a result of any other category of Housing conversion action besides preservation prepayments (e.g., opt-outs are not covered by this notice). Attachment A of this notice is a list of the projects for which HUD assigned preservation vouchers to PHAs based on an owner notification of a

prepayment or voluntary termination of mortgage insurance for a preservation eligible project for the years in question.

2. Background.

Enhanced vouchers differ from regular vouchers in two main respects: (1) the family must pay an enhanced voucher minimum rent and (2) the gross rent (rent to owner plus PHA allowance for tenant-paid utilities) of the unit is the payment standard used to determine the amount of the housing assistance payment (so long as the family resides in the same project). The gross rent is used as the payment standard instead of the PHA's normally applicable payment standard that caps the amount of subsidy that is paid on behalf of a voucher family. (The rent to owner must always be reasonable compared to similar unassisted units in the relevant market). In other words, the gross rent is always used to determine the family's enhanced voucher subsidy, even in cases where the PHA's normally applicable payment standard would have ordinarily limited the amount of subsidy paid on behalf of the family.

Before FY 2000, HUD Appropriations Acts only authorized enhanced voucher assistance in cases where the owner either prepaid the mortgage or voluntarily terminated the mortgage insurance of a preservation eligible project (hereafter referred to as "preservation prepayments"), and only if, as the result of a rent increase occurring no later than one year following the effective date of the prepayment or voluntary termination of mortgage insurance, the family would be required to pay more than 30 percent of adjusted monthly income for rent.

HUD issued HUD Notices PIH 97-29, 98-29, and 99-16, which have now expired, to provide guidance on the administration of these enhanced vouchers to cover preservation prepayment or voluntary terminations of mortgage insurance that occurred in FY 1997, 1998, and 1999. These notices provided that the requirement to use the gross rent as the payment standard for a preservation voucher ("preservation payment standard") applied to the first rent increase following the effective date of the owner's prepayment or voluntary termination (the rent increase that triggered the family's eligibility for the preservation voucher). While the family would retain this "preservation payment standard" for as long as the family resided in the project, normal voucher program rules applied in the case of all subsequent rent increases (under which the family would be responsible for any portion of the rent increase that exceeds the applicable payment standard).

Title V of the Department of Housing and Urban Development's FY 2000 Appropriations Act (Public Law 106-74, enacted October 20, 1999; 113 Stat. 1100, 1122) amended Section 8 of the United States Housing Act of 1937 by creating a new subsection (t) providing permanent statutory authority for enhanced voucher assistance. Section 8(t)(1)(B) of the United States Housing Act of 1937 provides that the "enhanced" voucher payment standard is equal to the rent for the dwelling unit, as such rent is increased from time to time over the course of the family's assisted

tenancy in the same project. (This provision was subsequently amended by section 2801 of Public Law 106-246, July 13, 2000; 114 Stat. 569.)

Section 8(t)(3) of the United States Housing Act of 1937 (as amended by Section 538(a) of Title V, subtitle C) provided that, notwithstanding any other provision of law, any preservation voucher assistance provided under the FY 1997, 1998, and 1999 Appropriations Acts is subject to the same requirements as enhanced voucher authority provided under Section 8(t). HUD Notice PIH 00-9, which was issued March 7, 2000, but has since expired, provided guidance on implementation of this provision. The notice provided that in order to conform the existing program practices to the new enhanced voucher rules, the PHA must henceforth use the current gross rent as the payment standard at all times (provided the rent is reasonable and exceeds the normally applicable payment standard), commencing on the effective date of the family's first annual re-examination of family income (as required pursuant to section 8(o)(5) of the United States Housing Act of 1937) on or after October 20, 1999, the date of enactment.

In part to avoid the possibility of plaintiffs filing lawsuits against individual PHAs, HUD has determined it is in HUD's and the PHAs' best interest to negotiate a settlement agreement in the Federal litigation (Taylor vs. Jackson). As part of the settlement agreement, HUD is amending the above policy to make the conversion of the preservation voucher assistance for an eligible family to the enhanced voucher rules under section 8(t) effective from the effective date of the prepayment or voluntary termination of mortgage insurance. Preservation voucher families that paid out-of-pocket for owner rent increases (i.e., the reasonable gross rent of the unit exceeded the payment standard used to calculate the family's preservation voucher subsidy) at the project are eligible for a retroactive adjustment of their assistance.

3. Eligibility for Retroactive Adjustments of Preservation Voucher Assistance.

In order to be eligible for a retroactive adjustment of preservation voucher assistance, all of the following conditions must apply to the family:

- (1) The family must have received a preservation voucher as the result of a rent increase occurring no later than one year from the effective date of the owner's prepayment of the mortgage or the voluntary termination of the mortgage insurance in a preservation eligible project that occurred in FY 1997, 1998 or 1999. See the project listing (Attachment A) of this notice;
- (2) Following the initial rent increase that established both the family's eligibility for the preservation voucher and the preservation voucher payment standard, the owner of the project subsequently increased the rent for the unit before the family's preservation voucher assistance was converted to the enhanced voucher rules established under section 8(t); and

- (3) The family continued to live in the same project. The family was required to pay for the rent increase or increases at the project out-of-pocket because the new gross rent of the unit in the project exceeded the payment standard used to calculate the family's preservation voucher housing assistance payments.

Families that meet all of the requirements described above are eligible for an adjustment. So long as the family meets the above criteria, the family is eligible for an adjustment even though the family may no longer reside at the project, or in the jurisdiction of the PHA that issued the preservation voucher. A family need not still be a voucher program participant to be eligible. The family may be unassisted or may be assisted through another housing program.

4. PHA Procedures.

A. Determination of Family Eligibility and Calculation of the Adjustment.

Family eligibility shall be determined in the following manner:

- (1) If a family that received a preservation voucher from a PHA is still a current participant in the PHA's voucher program, the PHA will automatically determine if the family is eligible for an adjustment. If the PHA compiled and retained a master list of the families that were issued preservation vouchers as the result of a covered prepayment, the PHA shall review their records to determine if any of the families are entitled to an adjustment.

If the PHA does not have a master list of the families that received preservation vouchers as the result of a covered prepayment, the PHA must determine eligibility for an adjustment as part of the current participant's next regular annual re-examination following receipt of this notice. The PHA shall determine if the family received a "preservation voucher" under a special allocation of voucher assistance provided to the PHA as a result of a covered prepayment or voluntary termination that occurred in FY 1997, 1998, or 1999.

The PHA may obtain this information by reviewing the family file or interviewing the family about the circumstances of their admission to the housing choice voucher program (assuming the PHA conducts in-person reexaminations) and then verifying the information provided by the family with the PHA's records.

In cases where the family received a preservation voucher in FY 1997, 1998, or 1999, the PHA will determine if any subsequent rent increase at the project for the preservation voucher family resulted in the gross rent of the unit exceeding the payment standard used to calculate the family's preservation voucher housing assistance payment.

If the gross rent of the unit exceeded the payment standard used to determine the amount of the housing assistance, the PHA shall calculate the amount of additional housing assistance payment for the family. To calculate the retroactive amount to be provided to the family, the PHA shall subtract the payment standard used to calculate the family's voucher housing assistance payment at the time from the gross rent. This difference is then multiplied by the number of months for the time that the gross rent exceeded the payment standard by such amount. In cases where the family was impacted by more than one increase, the PHA will calculate the impact of each rent increase and then add the amounts together to determine the adjustment. Attachment D provides two examples of the calculations.

- (2) With regard to families that have utilized the portability rules to move from an initial PHA to a receiving PHA, if the initial PHA has a master list of preservation families then the initial PHA shall review the relevant files of those families on the list, including those that moved under the portability procedures. If the family has ported and the initial PHA is being billed by the receiving PHA on behalf of the family, the initial PHA shall contact the family directly at the address indicated on the billing form if the family is eligible for an adjustment. If the family file indicates that the family ported but was absorbed by the receiving PHA, the initial PHA that issued the family the preservation voucher shall contact the receiving PHA and ask the receiving PHA to have the family contact the initial PHA concerning the adjustment.

In the case where the initial PHA does not have a master list, the initial PHA shall examine the files of any portability families under billing arrangements when it receives the annual recertification notice from the receiving PHA. If the family is eligible for an adjustment, the initial PHA will contact the family directly at the address listed in the portability records if the family is eligible for an adjustment.

Any adjustment for a family that moved under the portability procedures is paid by the initial PHA directly to the family. The receiving PHA is not involved in either the calculation of the adjustment or in making the adjustment.¹

- (3) PHAs need not automatically determine if former voucher program participants in their program are eligible for a retroactive housing assistance payment pursuant to this notice. Rather, such families must apply to the PHA for retroactive assistance. All PHAs shall post one of the two attached uniform Notice of Enhanced Voucher Retroactive Adjustment (Tenant Notice) at their own facilities. PHAs that did not receive preservation vouchers as a result of a

¹ This section concerning portability families applies only to families that received enhanced voucher assistance, but did not receive enhanced voucher assistance to cover any subsequent rent increases while still residing at the subject property where the owner prepaid the mortgage or terminated the mortgage insurance.

preservation prepayment or voluntary termination of mortgage insurance in FY 1997, 1998, or 1999 shall use Version A of the Tenant Notice (attachment B of this notice). PHAs that received preservation vouchers for a covered project shall use Version B of the Tenant Notice (attachment C of this notice). PHAs shall also distribute the applicable Notice of Enhanced Voucher Retroactive Adjustment to welfare offices, unemployment offices, and major community action groups located in their jurisdictions, and request that these institutions post the notices in a public place. PHAs shall also request such institutions to publish the Notice of Enhanced Voucher Retroactive Adjustment in their newsletters, if applicable, HUD encourages, if feasible, that PHAs use other means that they believe will be effective in order to reach such families that no longer participate in the program, but who may be eligible for the retroactive adjustment pursuant to this notice.

PHAs shall examine their records to verify if families that apply for the retroactive adjustment are eligible for a housing assistance payment pursuant to this notice. If the PHA has disposed of the records in question, the PHA may consider documentation provided by the family in verifying that the family is eligible and in calculating the retroactive adjustment. The PHAs shall determine if the documentation validates the families' claims for retroactive adjustment.

- (4) The PHA must copy and retain a copy of any documentation submitted by the family upon which the PHA bases a retroactive adjustment for at least three years.

B. Payment of Retroactive Enhanced Voucher Assistance.

After the PHA determines the amount of retroactive enhanced voucher assistance for an eligible family as described above, the PHA shall pay the assistance directly to the eligible resident in one lump sum payment, if feasible. If a lump sum payment is not feasible (e.g., sufficient funding is not immediately available to make a lump sum payment or the PHA payment system is not compatible with providing lump sum adjustments), the PHA may opt to provide assistance to the eligible family by reducing the family share until the total off-set the family receives is equal to the total amount of the retroactive adjustment for the family. If necessary, PHAs may make retroactive adjustments to portable families by prorating the amount of the adjustment and paying a portion to the family until the amount paid to the family equals the total amount of the retroactive adjustment for the family. In the case where a PHA may make a lump-sum payment to some families but not others, families that are currently assisted through the portability procedures must be given priority to receive a lump-sum over families currently assisted in the PHA jurisdiction.

The PHA may only make such payments or prorations to the extent that the PHA has sufficient budget authority available under its ACC to do so. Should the PHA lack sufficient funding, payments or prorations are to be made in the future subject to the availability of appropriated funds and subject to any limitations in the law or in HUD regulations and requirements. In determining whether it has sufficient funding, the PHA must take into the consideration ACC program reserves, including reserves resulting from the turnover of

housing choice vouchers. Under no circumstances may the PHA make retroactive adjustments if continued assistance for current voucher program participants would be jeopardized as a result. In such a case, the PHA must delay making the retroactive payment adjustments.

If the family currently owes the PHA or another PHA money in connection with the Section 8 or public housing program, the PHA may reduce the amount of the adjustment to satisfy the family's debt to the PHA or another PHA.

5. Record-keeping and retention. The PHA is reminded to keep a record of retroactive adjustments provided under this notice in order to support PHA budget and financial statements for the program in accordance with 24 CFR 982.158, Program accounts and records. For each project, the PHA must maintain the names of the families, the amount of the retroactive assistance payment, and the date by which the payment was made (or the period of the off-set if the PHA is unable to make a single lump-sum payment). The PHA must make this record available to HUD at HUD's request.

6. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number 2577-0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

7. Additional Information. Any questions related to the eligibility of families and the calculation of the retroactive adjustment under this notice should be addressed to the Housing Voucher Management and Operations Division at (202) 708-0477.

Michael Liu
Assistant Secretary for Public
and Indian Housing

Attachment B

This is the public notice that is to be used by PHAs that did not receive preservation vouchers in FY 1997, FY 1998, and FY 1999.

NOTICE TO PERSONS WHO RECEIVED SECTION 8 P RESERVATION VOUCHERS IN FY 1997 -1999

The [insert PHA name] did not administer preservation vouchers covered by the settlement and has no information concerning this class action settlement and potential relief. **Do not contact the [insert PHA name] regarding this notice.** If you only received voucher assistance from [insert PHA name], you are not eligible for relief as a result of this settlement.

You may be eligible for retroactive relief pursuant to a class action settlement in Taylor v. Jackson, Civil Action No. 02-1120 (D. Oregon). You may be eligible for relief if you meet all of the following conditions:

1. You received a preservation voucher from the public housing agency between October 1, 1996, and September 30, 1999. In order to have received a preservation voucher:
 - a. you must have resided in a section 236 or section 221(d)(3) project where the owner prepaid the mortgage or voluntarily terminated the mortgage insurance during this period; and
 - b. the owner increased the rent no later than one year from the effective date of the owner's prepayment of the mortgage or voluntary termination of the mortgage insurance.
2. Following the initial rent increase that established both your eligibility and the preservation voucher payment standard, the owner of the project subsequently increased the rent for the unit before your preservation voucher assistance was converted to the enhanced voucher rules established under 42 U.S.C. § 1437f(t) (current enhanced voucher rules allows the subsidy to increase to cover all subsequent rent increases); and
3. As a result, you were required to pay for one or more subsequent rent increases that the preservation voucher subsidy did not cover until such time that you either left the project in question or your preservation voucher was converted to an enhanced voucher. Your preservation voucher would have been converted to enhanced voucher assistance by the public housing agency on the effective date of your first annual income recertification on or after October 20, 1999.

If you are currently assisted under the voucher program by the same PHA that issued you the preservation voucher, the PHA will automatically determine your eligibility and calculate the adjustment. You do not need to do anything to receive the adjustment until your annual recertification of income.

If you believe that you may be eligible for relief under this settlement, you should contact the Public Housing Agency that provided you the preservation voucher, or contact plaintiffs' counsel, The Oregon Law Center, 921 S.W. Washington, Suite 516, Portland, Oregon 97205, (telephone 800-898-5594, x147), www.hud-enhanced-vouchers.org.

Attachment C

This is the public notice to be used by public housing agencies that received preservation vouchers in FY 1997, 1998, and 1999.

NOTICE TO PERSONS WHO RECEIVED SECTION 8 P RESERVATION VOUCHERS IN FY 1997 -1999

You may be eligible for retroactive relief pursuant to a class action settlement in Taylor v. Jackson, Civil Action No. 02-1120 (D. Oregon). You may be eligible for relief if you meet all of the following conditions:

1. You received a preservation voucher from the public housing agency between October 1, 1996, and September 30, 1999. In order to have received a preservation voucher:
 - a. you must have resided in a section 236 or section 221(d)(3) project where the owner prepaid the mortgage or voluntarily terminated the mortgage insurance during this period; and
 - b. the owner increased the rent no later than one year from the effective date of the owner's prepayment of the mortgage or voluntary termination of the mortgage insurance.
2. Following the initial rent increase that established both your eligibility and the preservation voucher payment standard, the owner of the project subsequently increased the rent for the unit before your preservation voucher assistance was converted to the enhanced voucher rules established under 42 U.S.C. § 1437f(t) (current enhanced voucher rules allows the subsidy to increase to cover all subsequent rent increases); and
3. As a result, you were required to pay for subsequent rent increases that the preservation voucher subsidy did not cover until such time that you either left the project or your preservation voucher was converted to an enhanced voucher. Your preservation voucher would have been converted to enhanced voucher assistance by the public housing agency on the effective date of your first annual income recertification on or after October 20, 1999.

If you are currently assisted under the voucher program by the same PHA that issued you the preservation voucher, the PHA will automatically determine your eligibility and calculate the adjustment. You do not need to do anything to receive the adjustment until your annual recertification of income.

If you are no longer assisted by the same PHA that issued you the preservation voucher and you believe that you may be eligible for relief under this settlement, you should contact the Public Housing Agency that provided you the preservation voucher, or contact plaintiffs' counsel, The Oregon Law Center, 921 S.W. Washington, Suite 516, Portland, Oregon 97205, (telephone 800-898-5594, x147), www.hud-enhanced-vouchers.org.

Attachment D

The following are two examples of retroactive adjustment calculations in connection with the Taylor settlement. In all cases assume that the rent to owner, both initially and as the result of any rent increase, is reasonable and in accordance with program regulations, the lease, and State and local law.

Case 1

The family resided in the preservation eligible property when the owner prepaid the mortgage on April 13, 1998. The owner increased the rent effective July 1, 1998, and as a result the family received for preservation voucher assistance.

1. On July 1, 1998 the voucher HAP contract commenced (initial admission to voucher program).

Normally applicable payment standard: \$750

Gross rent of unit: \$840

Preservation voucher payment standard used to calculate HAP: \$840

2. Effective July 1, 1999 owner increased the rent to \$865

The PHA's normally applicable payment standard was still below \$840, so PHA continued to use \$840 is used to calculate family's subsidy.

Family is responsible for paying the additional \$25 (\$865-\$840).

3. Effective July 1, 2000, the family payment standard raised to the current gross rent of the unit in accordance with HUD Notice PIH 2000-9.

$\$25 \times 12 \text{ months} = \300 retroactive adjustment due to the family

Case 2

The family resided in a preservation eligible project when the owner prepaid the mortgage on April 30, 1997. The owner increased the rent effective on August 1, 1997, and as a result the family received preservation voucher assistance.

1. On August 1, 1997 the voucher HAP contract commenced (initial admission to voucher program).

Normally applicable payment standard: \$550

Gross rent of unit: \$750

Preservation voucher payment standard used to calculate HAP: \$750

2. Effective August 1, 1998 owner increased the rent to \$765

The PHA's normally applicable payment standard was still below \$750, so the PHA continued to use \$750 to calculate family's subsidy.

Family is responsible for paying the additional \$15 (\$765-\$750).

3. Effective August 1, 1999, the owner increased the rent to \$795

The PHA's normally applicable payment standard was still below \$750, so the PHA continued to use \$750 to calculate the family's subsidy.

The family is responsible for paying the additional \$45 (\$795-\$750)

4. The family moved from the project and the HAP contract terminated on October 31, 1999.

$\$15 \times 12 \text{ months} = \180

$\$45 \times 3 \text{ months} = \135

$\$180 + \$135 = \$315$ retroactive adjustment due to family